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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

No. 557.

CORA L. LAGEMANN,
Appellant,

vs.

HAROLD B. LAGEMANN.

Appeal from the Supreme Court of the State of Nevada.

PETITION FOR REHEARING.

CORA L. LAGEMANN,
Pro Se.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1948.

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CORA L. LAGEMANN,
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vs.

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Appeal from the Supreme Court of the State of Nevada.

PETITION FOR REHEARING.

Now comes the appellant and respectfully petitions this Honorable Court to set aside its order entered March 28, 1949, in words as follows, to-wit,

> "Per curiam: The appeal is dismissed for want of a substantial federal question,"

and to grant the appellant a rehearing upon the decision evidenced by such order, or to make and enter such order as will permit the consideration of this appeal upon its merits.

For grounds for such motion, the appellant respectfully represents to this Honorable Court that no question presented upon this appeal is frivolous or insubstantial, and in particular that the question presented by Assignment of Errors I as set forth in appellant's Statement as to Jurisdiction (pp. 6-8) is neither frivolous nor lacking in substantiality because controlled on the merits by settled doctrine.

I.

The order of this Court of March 28, 1949, indicates that the appellant's appeal was taken with due regard to all procedural steps, and that her constitutional objections were seasonably urged. It has been said that a per curiam order of dismissal for insubstantiality is appropriately used only if the record "discloses an issue palpably frivolous or one lacking in substantiality because controlled on the merits by settled doctrine." Frankfurter and Landis, 44 Harv. L. R. 1, 8. That the quoted statement is correct would seem to be indicated by reference to *Zucht v. King*, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194, cited by this Court in Paragraph 2 of Rule 12.

Appellant respectfully represents to this Court that a clear understanding of her contention set forth under Assignment of Errors I in her Statement as to Jurisdiction (pp. 6-8) cannot lead to the conclusion that it is either frivolous or controlled on the merits by settled doctrine. This, the appellant respectfully submits, should be evident upon a consideration of the issues relatively recently presented to this Court in similar controversies and considered by this Court of sufficient substantiality to deserve consideration. A tabular parallel presentation of the facts, judicial history and principal issue in Estin v. Estin, 334 U. S. 541, 68 S. Ct. 1087, 92 L. Ed. 1055, is illustrative:

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The Estin Case.	*The Case at Bar.*
The parties were married in the State of New York, and thereafter maintained their matrimonial domicile in that jurisdiction.	The parties were married in the State of Illinois, and thereafter maintained their matrimonial domicile in that jurisdiction.
The husband suffered a separate maintenance decree against him in favor of the wife in the state of matrimonial domicile.	The same.
The husband thereafter repaired to the State of Nevada, remained there for the requisite 42 days, and filed a suit to divorce his wife on the ground (permitted under Nevada law) that he and his wife had lived separate and apart for three years.	The same.
The wife, not personally served, elected to default in the Nevada proceeding, and did not plead therein the separate maintenance decree in her favor or urge that the husband could not proceed because of it.	The wife, not personally served, elected not to default in the Nevada proceeding, and pleaded therein the separate maintenance decree in her favor and urged that the husband could not proceed because of it.
The Nevada trial court granted the husband a divorce on the ground asserted.	The same.

The Estin Case.

The wife appeared in the New York courts to collect the allowance under her separate maintenance decree, and was met by the contention of the husband that the Full Faith and Credit Clause of the Federal Constitution, supporting the Nevada decree, was a bar to New York's enforcement of the separate maintenance decree.

The New York courts rejected the husband's constitutional contention.

The husband sought certiorari from the United States Supreme Court, contending that the New York courts erred in passing upon the constitutional question involved.

The essential federal question presented was: Is a decree of divorce obtained in the State of Nevada required to be given such faith and credit in the State of New York as will prevent the State of New York from enforcing a prior decree of separate maintenance between the same parties?

The Case at Bar.

The wife appealed to the Supreme Court of Nevada, there asserting that the Full Faith and Credit Clause of the Federal Constitution, supporting the Illinois decree, was a bar to Nevada's enforcement of the three-years-separation divorce law in her case.

The Nevada court rejected the wife's constitutional contention.

The wife appealed to the United States Supreme Court, contending that the Nevada court erred in passing upon the constitutional question involved.

The essential federal question presented was: Is a decree of separate maintenance obtained in the State of Illinois required to be given such faith and credit in the State of Nevada as will prevent the State of Nevada from enforcing its law providing for divorce upon separation by the same parties?

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The Estin Case.	*The Case at Bar.*
The United States Supreme Court granted certiorari, thus in effect determining that a substantial federal question was presented.	The United States Supreme Court dismissed the appeal, and upon the express ground that a substantial federal question was not presented.

Fortification of appellant's contention that the question urged by her is substantial may be found in three other cases involving conflicts in the law of domestic relations, decided on the same day that the *Estin* decision was announced. *Sherrer v. Sherrer*, 334 U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 1055; *Coe v. Coe*, 334 U. S. 378, 92 L. Ed. 1064; *Kreiger v. Kreiger*, 334 U. S. 555, 68 S. Ct. 1221, 92 L. Ed. 1086. It may also be found in *Esenwein v. Pennsylvania*, 325 U. S. 279, 89 L. Ed. 1608, 65 S. Ct. 1118. In fact, it may be found in the two *Williams* decisions themselves (317 U. S. 599, 87 L. Ed. 489, 63 S. Ct. 207; 325 U. S. 226, 89 L. Ed. 1577, 65 S. Ct. 1092).

All those cases, appellant respectfully asserts, involved the primary federal question of the effect and influence of a Nevada divorce decree (in the *Sherrer* case a Florida decree was involved) upon litigation in other states arising from the relation of husband and wife. In all of them, this Court necessarily determined that the question was substantial. In the case at bar, there is involved the primary federal question of the effect and influence of an Illinois separate maintenance decree upon litigation in Nevada arising from the relation of husband and wife. Appellant respectfully submits that this Court should not in consistency hold that question insubstantial.

There is, of course, nothing in this Court's order which would lead to the conclusion that the Court is of the view

that an Illinois separate maintenance decree lacks the attributes of a judgment sufficient to require faith and credit by another jurisdiction, but out of an abundance of caution appellant desires to call the Court's attention to *Harding v. Harding*, 198 U. S. 317, 29 L. Ed. 1066, 25 S. Ct. 679, wherein an Illinois decree under the same statute as warranted the decree now relied on by appellant was ordered granted faith and credit in the courts of California so as to bar a divorce to a husband. That the *Harding* case is not a complete and controlling precedent for the instant controversy lies in the fact that the California divorce statute there involved was of the traditional type, requiring a desertion by the defendant spouse, while the Nevada statute here involved is a modern concept which holds that mere separation is sufficient, even though it be caused by the party who seeks the divorce.

Appellant's contention—and she feels she is supported by the cited Illinois decisions—is that the separate maintenance decree awarded her in Illinois authorized her to live separate and apart from her husband, and that under Illinois law none of her rights as a spouse could be forfeited by reason of that separation. Had her husband promptly upon the rendition of the decree removed to Nevada, and remained there, separated from her, for the three-year period required by Nevada law, a case might be made for the right of Nevada, on considerations of its own public policy, to terminate the relation. That is not the fact here, however. The three years of separation relied on by the Nevada courts in granting appellant's husband a divorce did not elapse while her husband resided in Nevada, but (as to most of the period, excluding the time required for the husband to qualify for suit in Nevada) they elapsed while the husband and the appellant were both actually domiciled in the State of Illinois.

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As asserted by appellant in her Statement as to Jurisdiction (p. 8), the Nevada ruling is "virtually that a course of conduct permitted or even required of its residents by the State of Illinois can be seized upon by the State of Nevada, when one of the parties removes there and resides for six weeks, to free him of his marital obligations."

II.

As to the question presented under Assignment of Errors II in her Statement as to Jurisdiction (that the Nevada statute permitting divorce without fault constitutes a law impairing the obligations of a contract), appellant assumes that this Court regards *Maynard v. Hill*, 125 U. S. 190, 31 L. Ed. 654, 8 S. Ct. 723, as enunciating the settled law. If this assumption is correct, she respectfully prays the reconsideration of its views by this Court, but she makes no argument additional to that set forth in her statement. As to the question presented under Assignment of Errors III (that the enforcement of the Nevada statute permitting dissolution of a marriage without fault on the part of a protesting spouse at the discretion of the court deprives her of her property without due process of law) appellant is without information as to reason for the determination made by this Court. She respectfully prays a reconsideration by this Court, but she makes no argument additional to that set forth in her statement.

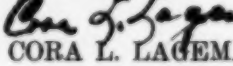
In his dissenting opinion in *Estin v. Estin*, Mr. Justice Jackson, relating the history of the case, said:

> "These parties lived together in New York State during their entire married life. Courts of that State granted judgment of separation, with award of alimony to the wife, in October 1943. Three months later

> the husband journeyed to Nevada and in three months began a divorce action. No process was served on the wife in Nevada; she was put on notice only by constructive service through publication in New York. Notified thus of what was going on, she was put to this choice: to go to Nevada and fight a battle, hopeless under Nevada laws, to keep her New York judgment, or to do nothing."

Mrs. Estin did nothing, and this Court subsequently determined that the question of whether the Nevada divorce decree controlled her New York separate maintenance decree was a substantial federal question, and reviewed it. The appellant elected to go to Nevada and fight a battle to keep her Illinois judgment, i. e., to establish its superiority over Nevada law, at least in respect of the time during which both she and her husband resided in Illinois. She now respectfully, but earnestly, submits to this Honorable Court that in so doing she has raised a question of substantiality under federal law.

Respectfully submitted,



CORA L. LAGEMANN,
Appellant.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Cora L. Lagemann,
Appellant.

I, Emerson Baetz, of Alton, Illinois, a member of the Bar of the State of Illinois, do hereby certify that I served as guardian ad litem for Cora L. Lagemann, appellant herein, by appointment of the Circuit Court of Madison

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County, Illinois, during that period of time during which she was adjudicated as insane, and that since her restoration to civil rights I have continued to advise her in respect of litigation commenced during her insanity, and now continued; and that to my knowledge the foregoing Petition for Rehearing is presented in good faith, and not for delay, as required by the Rules of the Supreme Court of the United States.

Emerson Baetz

Emerson Baetz.